

Abid Mohammad Khan Vs. the State

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Court : Madhya Pradesh

Decided On : Oct-01-1957

Reported in : AIR1958MP44; (1958)IILLJ425MP

Judge : Dixit and ;Newaskar, JJ.

Acts : [Constitution of India](#) - Articles 226 and 311; Madhya Bharat Civil Services Rules (Punishment and Appeal), 1950

Appeal No. : Civil Misc. No. 14 of 1956

Appellant : Abid Mohammad Khan

Respondent : The State

Advocate for Def. : P.R. Sharma, Government Adv.

Advocate for Pet/Ap. : Homi Daji, Adv.

Disposition : Petition allowed

Judgement :

Dixit, J.

1. By this petition under Article 226 of the [Constitution of India](#), the applicant Abid Mohammad Khan seeks a writ to quash an order dated 3rd January 1956, for the former Madhya Bharat Government placing him under suspension with effect from

31st January 1954 and a direction to restrain the Government from enforcing it.

2. The petitioner was a Sub-Inspector in the Customs and Excise Department of the former State of Madhya Bharat. By an order dated 11th January 1954, he was suspended pending investigation into certain charges against him. In pursuance of the order of suspension, he handed over charge of his office on 31st January 1954. As a result of the enquiry, he was ultimately dismissed from service by an order passed by the Commissioner of Customs and Excise on 7th July 1954.

That order of dismissal was quashed on 16th November 1955, by the Madhya Bharat High Court in a petition under Article 226 of, the Constitution, *Abid Mohammad Khan v. State of Madhya Bharat* (Civil Misc. Case No. 17 of 1955: (AIR 1956 Madh B 259 (A)), filed by the applicant, holding that the order of dismissal of the petitioner was illegal and inoperative. Subsequently, on 3rd January 1956, the Raj-Pramukh of Madhya Bharat passed two orders, one reinstating the applicant in service and the other suspending him with retrospective effect from 31st January 1954. There is no dispute as regards these facts.

The petitioner challenges the validity of the suspension order dated 3rd January 1956, on the ground that the Madhya Bharat Government had no power to suspend him with retrospective effect from 31st January 1954, and that under the decision dated 16th November 1955 of the Madhya Bharat High Court in Civil Misc. Case No. 17 of 1955: (AIR 1956 Madh-B 259 (A), he was entitled to be treated as on duty till the date of that decision and even after that. In the return filed on behalf of the State of Madhya Bharat, it was averred that the Madhya Bharat Government had the power to suspend a Government servant with retrospective effect.

3. It was argued by Mr. Daji, learned counsel appearing for the petitioner, that suspension with retrospective effect was a contradiction in terms and that in the Madhya Bharat Civil Services Rules (Punishment and Appeal), 1950, there was no provision giving the Government power to order suspension with retrospective effect, and that on 3rd January 1956, there was even no rule under which a Government servant could be suspended pending an enquiry.

Reliance was placed by the learned counsel for the petitioner on the decisions in *Om Prakash Gupta v. State of Uttar Pradesh*, (S) AIR 1955 SC 600 (A-1) and *Ilemanta Kumar v. S. N. Mukherjee*, AIR 1954 Cal 340 (B). In reply, Mr. Sharma, learned Government Advocate, conceded that on 3rd January 1956, there was no rule which empowered the Government to suspend a civil servant pending an enquiry.

He, however, contended that even in the absence of any rule there was inherent power in the Government to pass an order of suspension against a civil servant pending an enquiry and to make an order suspending him retrospectively so as to cover the period during which the civil servant did not, in fact, perform the duties of his office.

It was also said that the question of the validity of the order of suspension affected a claim for arrears of salary for the period of suspension and could not be considered divorced from it and as a claim for arrears of salary for the period of suspension could not be made in proceedings under Article 226 of the Constitution, the applicant could not be granted the redress he was seeking.

4. In my judgment, the contention advanced by the learned counsel for the petitioner that on 3rd January 1956, the Government could not make an order suspending the applicant with effect from 31st January 1954, must be given effect to. The Madhya Bharat Civil Services Rules (Punishment and Appeal), 1950, as they stood on 31st January 1954, only provided for suspension as a penalty.

There was no rule providing for suspension pending an enquiry until 31st October 1956, that is to say just before the State of Madhya Bharat became a part of the new State of Madhya Pradesh. There was never at any time any rule enabling the Government to make an order suspending a Government servant with retrospective effect.

In the instant case, the suspension of the applicant, as admitted in para. 3 of the return filed by the State, was not by way of penalty. The order of suspension made against the applicant was clearly one made pending an enquiry. It was not a penalty imposed after an enquiry. The enquiry resulted in an order of dismissal

bay way of penalty being made against the applicant.

It is not necessary to consider whether, in the absence of any express rule, the Madhya Bharat Government had on 3rd January 1956, any inherent power to suspend the petitioner pending an enquiry. Learned counsel for the petitioner, though he raised the point, did not press it for decision.

Assuming that the Government had this power, the question whether in the exercise of inherent power of suspension the Government could, by an order made on 3rd January 1956, make the applicant's suspension effective from 31st January 1954, depends on the concept of the word 'suspension' and on the effect of the order dated 16th November 1955, of the Madhya Bharat High Court quashing the order made on 7th July 1954, dismissing the petitioner.

Now, the word 'suspension', according to Oxford Dictionary, means 'action of debarring or state of being debarred, especially for a time, from a function or privilege; temporary deprivation of one's office or position' or again 'state of being temporarily kept from doing or deprived of something'. The meaning of the word 'suspend' has been given in the dictionary as to debar, usually for a time, from the exercise of a function or enjoyment of a privilege, specially to deprive temporarily of one's office'; or again 'to interdict'.

5. 'Suspension' thus connotes temporary cessation of something as right, work or labour. This very concept of the word 'suspension' rules out a Government servant who is in service and who has in law performed the duties of his office during a certain period being placed subsequently under suspension for that period. When in law he has performed the duties then there can be no question of forbidding him from exercising the functions of his office in that period which is already past.

No doubt, a Government servant, who has discharged one function or his office during a certain period, can, by a legal action, be deem-ed as not to have performed the duties. But such a action has to be created by an express rule. It cannot be derived from the ordinary meaning of the words 'suspension' and 'suspend'.

The inherent power claimed by the Madhya Bharat Government to suspend a Government servant can only be in consonance with the ordinary connotation of the terms 'suspension' and 'suspend'. It cannot be contradictory of the terms. Consistent with the meaning of these expressions, it must be held that, in the absence of any express rule, Government has no power to treat a Government servant as suspended during a period prior to the making of the order of suspension, when he has already in law performed the duties of his office during that period.

A similar view has been taken in AIR 1954 Cal 340 (B). In that case, after referring to the meaning of the words 'suspension' and 'suspended' given in the Oxford Dictionary, the learned Chief Justice of the Calcutta High Court observed:--

'The basic idea underlying the root word 'suspend' and all its derivatives is that a person while holding an office and performing its functions or holding a position or privilege should be interrupted in doing so and debarred for the time being from further functioning in the office or holding the position or privilege. He is intercepted in the exercise of his functions or his enjoyment of the privilege and put aside, as it were, for a time, excluded during the period from his functions or privileges. Such being the concept of a suspension order, suspension with retrospective effect is a contradiction in terms.'

6. The question whether the applicant was in service on 3rd January 1956, when the suspension order was passed and could in law be regarded as on duty from 31st January 1954, till 3rd January 1956, is to my mind concluded by the question of the Supreme Court in (S) AIR 1935 SC 600 (A1).

In that case a Government servant of Uttar Pradesh was suspended pending an enquiry into certain charges against him. At the conclusion of the enquiry, an order of dismissal by way of penalty was made against him. He later on filed a suit for a declaration that the order of dismissal was wrongful, illegal, void and inoperative and that he still continued to be a member of the civil service entitled to full pay with all increments as they fell due.

He also prayed for a decree for recovery of arrears of salary from the date of the suspension order till 31st December 1947. The Civil Judge decreed the civil servant's suit in part declaring that the order dismissing him from service was illegal and that he still continued to be a member of the Uttar Pradesh Civil Service. He however, declined to pass a decree for arrears of salary. When the matter went up before the Supreme Court, the civil Servant's claim for salary from the date of the order of dismissal until 31st December 1947, was decreed.

When decreeing the claim, the Supreme Court observed that 'as the result of the enquiry an order of dismissal by way of penalty had been passed against the appellant. With that order, the order of suspension lapsed. The order of dismissal replaced the order of suspension which then ceased to exist. That clearly was the position between the Government of the United Provinces and the appellant.

The subsequent declaration by a Civil Court that the order of dismissal was illegal could not revive an order of suspension which did not exist. Here also an order of suspension pending an enquiry was passed on 11th January 1954, and this was followed by an order of dismissal on 7th July 1954. With the passing of the order of dismissal, the suspension of the applicant came to an end. It could not be revived by the declaration of the Madhya Bharat High Court that the order of dismissal was illegal.

The effect of the order of the Madhya Bharat High Court holding that the dismissal of the applicant was illegal was to restore the petitioner to the post held by him and to place him on duty inherent with effect from the date of the order of suspension, namely, 11th January 1954, as if, since that date he had not been under suspension at all.

If then the applicant is regarded as on duty from the date of the order of suspension till the date of the decision of the Madhya Bharat High Court, and even after that date till 3rd January 1956, then it follows that the Government could not by making an order on 3rd January 1956, treat him as under suspension prior to that date. The order dated 3rd January 1958, is, therefore, clearly invalid in so far as it suspended the petitioner with retrospective effect from 31st January 1954.

7. Mr. Sharma, learned Government Advocate, pointed out that in the Supreme Court case, (S) AIR 1935 SC 600 (AI), the civil servants claim for arrears of salary from the date of the order of suspension till the date of the order of dismissal was not decreed and that this indicated that the Supreme Court held that the suspension of the civil servant during that period was not at all affected by the declaration of the Court that the order of dismissal was illegal.

Learned Government Advocate also referred to U.P. Government v. S. Tabarakh Hussain. (S) AIR 1956 All 151 (C) and said that in that case also on the authority of (S) AIR 1953 SC 600 (AI), the claim for arrears of salary for the period from the date of the order of suspension till the date of the order of dismissal was not decreed. It is true that in both these cases, the civil Servants' claim for arrears of salary for the aforesaid period was not decreed.

But that was because in each of those cases, the civil servant preferred to give up his claim for arrears of salary from the date of the order or suspension till the date of the order of dismissal and not because of any observation of the Supreme Court to the effect that the suspension of the civil servant during this period was not at all affected by the order of the Court declaring the order of dismissal as illegal. The Supreme Court no doubt made the observations reproduced earlier while dealing with the claim for arrears of salary from the date of the order of dismissal which was subsequently declared as illegal.

But that does not, in my opinion, alter the ratio decidendi of the case which is that the order of suspension pending an enquiry lapses and ceases to exist when at the conclusion of the enquiry an order of dismissal is made, and that when the order of dismissal is quashed there is no revival of 'the order of suspension which did not exist'. There is nothing in the decision of the Supreme Court to indicate that in laying down this principle the Supreme Court made a distinction between suspension from the date of the order of suspension till the date of the order of dismissal and suspension after the order of dismissal.

It is essential to note that the order of suspension which the Supreme Court said could not be revived was one made pending an enquiry. There was no question of the validity of any order of suspension made after the order of dismissal had been

quashed and placing the civil servant again on suspension from the date of the order of dismissal.

Further, by the observation quoted above, the Supreme Court repelled the contention advanced by the learned Attorney-General that when the order of dismissal was declared to be illegal, the enquiry, the outcome of which was the order of dismissal, remained pending and had not ended and that it could only end with a valid order replacing the order of suspension and that, therefore, the civil servant notwithstanding the declaration as illegal of the order of dismissal continued to be under suspension.

It is thus plain that the order of suspension which the Supreme Court said could not be revived covered the period of suspension from the date of the order of suspension till the date of the order of dismissal and even after that. The distinction sought to be drawn between the present case and the case of the Supreme Court by the learned Government Advocate is, therefore, untenable.

Even on the distinction drawn by him, it can at the most be urged that in (S) AIR 1955 SC 600 (A1), the Supreme Court left open the question whether on an order of dismissal being declared as illegal by a Court, an order of suspension pending an enquiry is revived as regards the period from the date of the order of suspension till the date of the order of dismissal.

It cannot be urged that the Supreme Court held that in regard to such period the order of suspension is revived, so as to preclude us from taking the view that when an order of dismissal of a civil servant, who was under suspension, pending enquiry, is declared as illegal, the civil servant must be regarded as on duty from the date of the order of suspension.

8. It was said on behalf of the State that the order dated 3rd January 1956, placing the applicant under suspension as from 31st January 1954, was in conformity with the fact that during this period he did not actually work.

If, as I think, when the order of dismissal was declared as illegal by the Madhya Bharat High Court on 16th November 1955, its effect was to restore the applicant

in service and to place him, on duty with effect from the date of the order of suspension, then it is no answer to say that during the above period the petitioner did not actually discharge the functions of his office.

The fact that the petitioner did not actually work from 31st January 1954, upto 3rd January 1956, cannot revive the suspension which under the decision of the Supreme Court in (S) AIR 1955 SC 600 (AI) could not be revived.

9. As to the learned Government Advocate's preliminary objection that the petition was not maintainable inasmuch as it was in substance one for enforcing a money claim, namely, a claim for the arrears of salary for the period of suspension in question, I think there is no substance in it. The petitioner is not seeking a mere declaration that the order dated 3rd January 1956, was unlawful so far as it related to his suspension prior to that date.

He is seeking a writ of certiorari to quash the said order to that extent and seeking a direction to forbear the Government from giving effect to it. The fact that consequent to the quashing of the order of suspension, the petitioner may make a demand for arrears of salary, cannot turn this petition into one for enforcing a claim for money.

An instance of the relief such as the one claimed by the petitioner in this case is to be found in AIR 1954 Cal 340 (B). The question whether for the period of suspension from the date of the order of suspension till the date of the order of dismissal, or for the matter of that for any period of suspension, the applicant is entitled to receive any salary is not before us and we express no opinion on it.

10. For the foregoing reason, this petition is accepted. The order dated 3rd January 1956 in so far as it purports to place the applicant under suspension during the period from 31st January 1954 till 3rd January 1956 is quashed and the opponent State is restrained from giving any effect to that order and from acting thereon or causing it to be acted upon to the extent mentioned above. The petitioner shall have from the opponent costs of this application. Counsel's fee is fixed at Rs. 100.

Newaskar, J.

11. I agree.

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